

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Joseph M. Sholder Bar No. 126347 Griffith & Thornburgh, LLP 8 E. Figueroa Street, Suite 300 Santa Barbara, CA 93101 Phone: (805) 965-5131 Fax: (805) 965-6751 Email: sholder@g-tlaw.com <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Movants	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - NORTHERN DIVISION	
In re: Clearwater Nursery, Inc. <div style="text-align: right;">Debtor(s).</div>	<div style="padding: 5px;"> CASE NO.: 9:17-bk-10525-PC CHAPTER: 7 </div> <div style="text-align: center; padding: 10px;"> NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (ACTION IN NONBANKRUPTCY FORUM) </div> <div style="padding: 5px;"> DATE: August 15, 2017 TIME: 10:00 a.m. COURTROOM: 201 </div>
Movant: Carolina Ramirez; Luis Angel Colunga Gocabar; Nelly Gonzales; Margarita Hernandez; Rigoberto Saavedra; Liney Silva	

1. **Hearing Location:**

- | | |
|--|--|
| <input type="checkbox"/> 255 East Temple Street, Los Angeles, CA 90012 | <input type="checkbox"/> 411 West Fourth Street, Santa Ana, CA 92701 |
| <input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills, CA 91367 | <input checked="" type="checkbox"/> 1415 State Street, Santa Barbara, CA 93101 |
| <input type="checkbox"/> 3420 Twelfth Street, Riverside, CA 92501 | |

2. Notice is given to the Debtor and trustee (*if any*)(Responding Parties), their attorneys (*if any*), and other interested parties that on the date and time and in the courtroom stated above, Movant will request that this court enter an order granting relief from the automatic stay as to Debtor and Debtor's bankruptcy estate on the grounds set forth in the attached Motion.
3. To file a response to the motion, you may obtain an approved court form at www.cacb.uscourts.gov/forms for use in preparing your response (optional LBR form F 4001-1.RFS.RESPONSE), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.

4. When serving a response to the motion, serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above.
5. If you fail to timely file and serve a written response to the motion, or fail to appear at the hearing, the court may deem such failure as consent to granting of the motion.
6. ☒ This motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1(d). If you wish to oppose this motion, you must file and serve a written response to this motion no later than 14 days before the hearing and appear at the hearing.
7. ☐ This motion is being heard on SHORTENED NOTICE pursuant to LBR 9075-1(b). If you wish to oppose this motion, you must file and serve a response no later than (date) _____ and (time) _____; and, you may appear at the hearing.
- a. ☐ An application for order setting hearing on shortened notice was not required (according to the calendaring procedures of the assigned judge).
- b. ☐ An application for order setting hearing on shortened notice was filed and was granted by the court and such motion and order have been or are being served upon the Debtor and upon the trustee (if any).
- c. ☐ An application for order setting hearing on shortened notice was filed and remains pending. After the court rules on that application, you will be served with another notice or an order that specifies the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion.

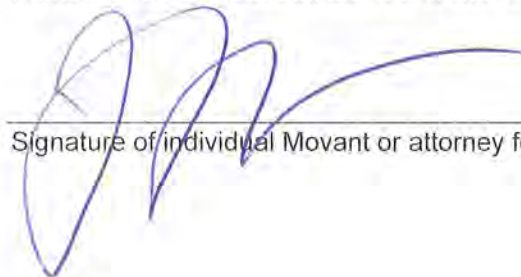
Date: July 20 2017

GRIFFITH & THORNBURGH, LLP

Printed name of law firm (if applicable)

Joseph M. Sholder

Printed name of individual Movant or attorney for Movant



Signature of individual Movant or attorney for Movant

MOTION FOR RELIEF FROM THE AUTOMATIC STAY AS TO NONBANKRUPTCY ACTION

1. In the Nonbankruptcy Action, Movant is:

- a. ☒ Plaintiff
- b. ☐ Defendant
- c. ☐ Other (specify):

2. The Nonbankruptcy Action: There is a pending lawsuit or administrative proceeding (Nonbankruptcy Action) involving the Debtor or the Debtor's bankruptcy estate:

- a. *Name of Nonbankruptcy Action:* Ramirez, et al. vs. Clearwater Nursery, Inc., et al.
- b. *Docket number:* CV110083
- c. *Nonbankruptcy forum where Nonbankruptcy Action is pending:* San Luis Obispo County Superior Court
- d. *Causes of action or claims for relief (Claims):* Class Action lawsuit re multiple Labor Code violations and violations of Bus. & Prof. Code.

3. Bankruptcy Case History:

- a. ☒ A voluntary ☐ An involuntary petition under chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13
was filed on (date) March 28, 2017.
- b. ☐ An order to convert this case to chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13
was entered on (date) _____.
- c. ☐ A plan was confirmed on (date) _____.

4. Grounds for Relief from Stay: Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant relief from stay to proceed with the Nonbankruptcy Action to final judgment in the nonbankruptcy forum for the following reasons:

- a. ☐ Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate.
- b. ☐ Movant seeks recovery primarily from third parties and agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- c. ☒ Mandatory abstention applies under 28 U.S.C. § 1334(c)(2), and Movant agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- d. ☐ The Claims are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum.
- e. ☒ The Claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum.

- f. ☐ The bankruptcy case was filed in bad faith.
- (1) ☐ Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents.
- (2) ☐ The timing of the filing of the bankruptcy petition indicates that it was intended to delay or interfere with the Nonbankruptcy Action.
- (3) ☐ Multiple bankruptcy cases affect the Nonbankruptcy Action.
- (4) ☐ The Debtor filed only a few case commencement documents. No schedules or statement of financial affairs (or chapter 13 plan, if appropriate) has been filed.
- g. ☐ Other (specify):

5. **Grounds for Annulment of Stay.** Movant took postpetition actions against the Debtor.

- a. ☐ The actions were taken before Movant knew that the bankruptcy case had been filed, and Movant would have been entitled to relief from stay to proceed with these actions.
- b. ☐ Although Movant knew the bankruptcy case was filed, Movant previously obtained relief from stay to proceed in the Nonbankruptcy Action in prior bankruptcy cases affecting the Nonbankruptcy Action as set forth in Exhibit ____.
- c. ☐ Other (specify):

6. **Evidence in Support of Motion: (Important Note: declaration(s) in support of the Motion MUST be signed under penalty of perjury and attached to this motion.)**

- a. ☒ The DECLARATION RE ACTION IN NONBANKRUPTCY FORUM on page 6.
- b. ☐ Supplemental declaration(s).
- c. ☐ The statements made by Debtor under penalty of perjury concerning Movant's claims as set forth in Debtor's case commencement documents. Authenticated copies of the relevant portions of the Debtor's case commencement documents are attached as Exhibit ____.
- d. ☐ Other evidence (specify):

7. ☐ **An optional Memorandum of Points and Authorities is attached to this Motion.**

Movant requests the following relief:

1. Relief from the stay pursuant to 11 U.S.C. § 362(d)(1).
2. ☐ Movant may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate.
3. ☒ The stay is annulled retroactively to the bankruptcy petition date. Any postpetition acts taken by Movant in the Nonbankruptcy Action shall not constitute a violation of the stay.

4. ☐ The co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) is terminated, modified, or annulled as to the co-debtor, on the same terms and condition as to the Debtor.
5. ☒ The 14-day stay prescribed by FRBP 4001(a)(3) is waived.
6. ☒ The order is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Nonbankruptcy Action.
7. ☒ The order is binding and effective in any future bankruptcy case, no matter who the debtor may be, without further notice
8. ☐ Other relief requested.

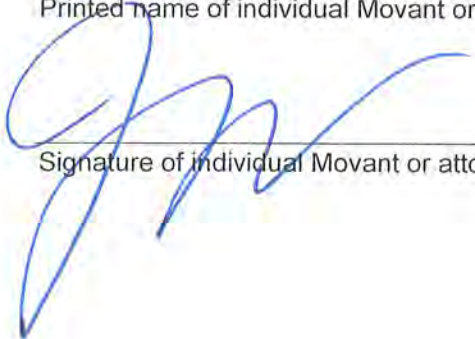
Date: July 20, 2017

Griffith & Thornburgh, LLP

Printed name of law firm (if applicable)

Joseph M. Sholder

Printed name of individual Movant or attorney for Movant


Signature of individual Movant or attorney for Movant

DECLARATION RE ACTION IN NONBANKRUPTCY FORUM

I, *(name of Declarant)* Allen K. Hutkin, declare as follows:

1. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding (Nonbankruptcy Action) because:

- ☐ I am the Movant.
☒ I am Movant's attorney of record in the Nonbankruptcy Action.
☐ I am employed by Movant as *(title and capacity)*:
☐ Other *(specify)*:

2. I am one of the custodians of the books, records and files of Movant as to those books, records and files that pertain to the Nonbankruptcy Action. I have personally worked on books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the acts, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the court if required.

3. In the Nonbankruptcy Action, Movant is:

- ☒ Plaintiff
☐ Defendant
☐ Other *(specify)*:

4. The Nonbankruptcy Action is pending as:

- a. *Name of Nonbankruptcy Action*: Ramirez, et al. vs. Clearwater Nursery, Inc., et al.
b. *Docket number*: CV110083
c. *Nonbankruptcy court or agency where Nonbankruptcy Action is pending*: San Luis Obispo County Superior Court

5. **Procedural Status of Nonbankruptcy Action:**

- a. The Claims are:
Class Action lawsuit for violations of California Labor Code and Business & Professions Code, including, but not limited to, (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime; (3) Failure to Provide Meal and Rest Periods; (4) Failure to Pay All Wages Upon Discharge; (5) Failure to Provide Itemized Wage Statements, (6) Failure to Provide Necessary Protective Clothing and Equipment and Failure to Indemnify Employees for Work-Related Expenses; (7) Unlawful Competition Pursuant to Bus. & Profs. Code §17200, et seq.; (8) Violation of Private Attorneys General Act.
- b. True and correct copies of the documents filed in the Nonbankruptcy Action are attached as Exhibit A.
- c. The Nonbankruptcy Action was filed on *(date)* 2/3/2011.
- d. Trial or hearing began/is scheduled to begin on *(date)* 10/23/2017.
- e. The trial or hearing is estimated to require 5-10 days *(specify)*.
- f. Other plaintiffs in the Nonbankruptcy Action are *(specify)*:
Movants herein are all named Plaintiffs in the lawsuit.

- g. Other defendants in the Nonbankruptcy Action are (*specify*):
Mahmood Jafroodi; Custom Labor Services, Inc.

5. **Grounds for relief from stay:**

- a. ☐ Movant seeks recovery primarily from third parties and agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or the Debtor's bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- b. ☒ Mandatory abstention applies under 28 U.S.C. § 1334(c)(2), and Movant agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or the Debtor's bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- c. ☐ Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate. The insurance carrier and policy number are (*specify*):
- d. ☒ The Nonbankruptcy Action can be tried more expeditiously in the nonbankruptcy forum.
- (1) ☒ It is currently set for trial on (*date*) 10/23/17.
- (2) ☐ It is in advanced stages of discovery and Movant believes that it will be set for trial by (*date*) _____. The basis for this belief is (*specify*):
- (3) ☒ The Nonbankruptcy Action involves non-debtor parties and a single trial in the nonbankruptcy forum is the most efficient use of judicial resources.
- e. ☐ The bankruptcy case was filed in bad faith specifically to delay or interfere with the prosecution of the Nonbankruptcy Action.
- (1) ☐ Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents.
- (2) ☐ The timing of the filing of the bankruptcy petition indicates it was intended to delay or interfere with the Nonbankruptcy Action based upon the following facts (*specify*):
- (3) ☐ Multiple bankruptcy cases affecting the Property include:
- (A) Case name:
Case number: _____ Chapter: _____
Date filed: _____ Date discharged: _____ Date dismissed: _____
Relief from stay regarding this Nonbankruptcy Action ☐ was ☐ was not granted.

(B) Case name:

Case number:

Chapter:

Date filed:

Date discharged:

Date dismissed:

Relief from stay regarding this Nonbankruptcy Action ☐ was ☐ was not granted.

(C) Case name:

Case number:

Chapter:

Date filed:

Date discharged:

Date dismissed:

Relief from stay regarding this Nonbankruptcy Action ☐ was ☐ was not granted.

☐ See attached continuation page for information about other bankruptcy cases affecting the Nonbankruptcy Action.

☐ See attached continuation page for additional facts establishing that this case was filed in bad faith.

f. ☐ See attached continuation page for other facts justifying relief from stay.

6. ☐ Actions taken in the Nonbankruptcy Action after the bankruptcy petition was filed are specified in the attached supplemental declaration(s).

a. ☐ These actions were taken before Movant knew the bankruptcy petition had been filed, and Movant would have been entitled to relief from stay to proceed with these actions.

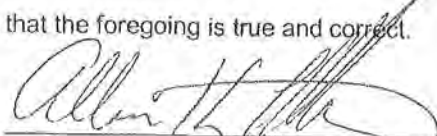
b. ☐ Movant knew the bankruptcy case had been filed, but Movant previously obtained relief from stay to proceed with the Nonbankruptcy Action enforcement actions in prior bankruptcy cases affecting the Property as set forth in Exhibit _____

c. ☐ For other facts justifying annulment, see attached continuation page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 20, 2017
Date

Allen K. Hutkin
Printed name


Signature

Allen K. Hutkin (#143200)
HUTKIN LAW FIRM
1229 Higuera Street, First Floor
San Luis Obispo, CA 93401
Telephone: (805) 544-1500
Facsimile: (805) 544-1532

Julia L. Montgomery (#184083)
Shannon M. Going (#273844)
CALIFORNIA RURAL LEGAL
ASSISTANCE FOUNDATION
2210 K Street, Suite 201
Sacramento, CA 95816
Telephone: (916) 446-7904
Facsimile: (916) 446-3057

Attorneys for Plaintiffs

FILED

APR 8 2011

SAN LUIS OBISPO SUPERIOR COURT
BY [Signature]
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

CAROLINA RAMIREZ; LUIS ANGEL
COLUNGA GOCABAR; NELLY
GONZALES; MARGARITA
HERNANDEZ; RIGOBERTO
SAAVEDRA; LINEY SILVA, individually
and on behalf of other individuals employed
under common circumstances and facts,

Plaintiffs,

vs.

CLEARWATER NURSERY, INC.;
MAHMOOD JAFROODI; CUSTOM
LABOR SERVICES, INC.; and DOES 1 TO
20, inclusive,

Defendants.

CV 110083

*AMENDED CLASS ACTION
COMPLAINT

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime;
3. Failure to Provide Meal and Rest
Periods;
4. Failure to Pay All Wages Upon
Discharge;
5. Failure to Provide Itemized Wage
Statements;
6. Failure to Provide Necessary
Protective Clothing and Equipment
and Failure to Indemnify Employees
for Work-Related Expenses;
7. Unlawful Competition Pursuant to
Bus. & Profs. Code §17200, et seq.;
8. Unlawful Competition Pursuant to
Bus. & Profs. Code §17200, et seq.
9. Violation of Private Attorneys
General Act

*AMENDED AS A MATTER OF
RIGHT PURSUANT TO CALIFORNIA
LABOR CODE §2699.3 (a)(2)(C)

1 Plaintiffs Carolina Ramirez, Luis Angel Colunga Gocabar, Nelly Gonzales,
2 Margarita Hernandez, Rigoberto Saavedra, and Liney Silva bring this suit as a class
3 action under Civil Code § 382 against Clearwater Nursery, Inc., Mahmood Jafroodi, and
4 Custom Labor Services, Inc. individually and on behalf of other individuals employed
5 under common circumstances and facts.

6 I. INTRODUCTION

7 1. This action revolves around Defendants' Clearwater Nursery, Inc.,
8 Mahmood Jafroodi, and Custom Labor Services, Inc.'s (hereinafter collectively referred
9 to as "Clearwater Nursery" or "Defendants") systematic failure to pay its California non-
10 exempt employees in conformance with California labor law. Plaintiffs Carolina
11 Ramirez, Luis Angel Colunga Gocabar, Nelly Gonzales, Margarita Hernandez, Rigoberto
12 Saavedra, and Liney Silva (hereinafter collectively referred to as Plaintiffs) are or were
13 employed as non-exempt employees by Defendants in and around San Luis Obispo
14 County to perform various tasks, including but not limited to, assembly line packaging
15 work, preparation and selection of plants for packing, clean-up work, unpacking of boxes
16 and other tasks as assigned. Plaintiffs allege that they have suffered injury and pecuniary
17 loss as a result of Defendants' failure to comply with labor laws and health and safety
18 regulations. Defendants' employment practices are unlawful and contrary to the public
19 policy of the State of California. Therefore, Plaintiffs bring this action under California's
20 Unfair Competition Law (the UCL) (Business and Professions Code 17200, et seq.)
21 individually and acting for the interests of other current and former employees in order to
22 enforce California labor laws and health and safety regulations.

23 2. Plaintiffs for themselves individually and for all other employees who
24 have a common interest, through their class-wide claims, seek restitution and other
25 appropriate relief for Defendants' failure to pay minimum and overtime wages for all
26 hours worked; failure to maintain adequate time records, failure to provide adequate wage
27 statements; and failure to authorize and permit the requisite number of rest periods and
28 meal periods per work period. Plaintiffs also seek relief for each Defendant's failure to

1 provide potable drinking water, and toilet and washing facilities.

2 3. Plaintiffs individually and for all others who have a common interest, also
3 seek injunctive relief requiring each Defendant to comply with all applicable California
4 labor laws and regulations in the future and preventing each Defendant from engaging in
5 and continuing to engage in unlawful and unfair business practices. Plaintiffs also seek
6 declaratory relief enumerating Defendants' violations so Defendants and the general
7 public will have clarity and guidance regarding Defendants' future employment practices.

8 II. PARTIES

9 4. Plaintiff Carolina Ramirez is an individual residing in Santa Barbara
10 County. She was employed as a non-exempt employee by Defendants in and around San
11 Luis Obispo County at least during the last two years. Plaintiff Luis Angel Colunga
12 Gocabar is an individual residing in San Luis Obispo County. He was employed as a
13 non-exempt employee by Defendants in and around San Luis Obispo County at least
14 during the last four years. Plaintiff Nelly Gonzales is an individual residing in San Luis
15 Obispo County. She was employed as a non-exempt employee by Defendants in and
16 around San Luis Obispo County at least during the last four years. Plaintiff Margarita
17 Hernandez is an individual residing in Santa Barbara County. She was employed as a
18 non-exempt employee by Defendants in and around San Luis Obispo County at least
19 during the last four years. Plaintiff Rigoberto Saavedra is an individual residing in San
20 Luis Obispo County. He was employed as a non-exempt employee by Defendants in and
21 around San Luis Obispo County at least during the last four years. Plaintiff Liney Silva is
22 an individual residing in San Luis Obispo County. She was employed as a non-exempt
23 employee by Defendants in and around San Luis Obispo County at least during the last
24 three years. As a result of the labor violations and Defendants' practices described
25 herein, Plaintiffs have suffered injury in fact and have lost money or property.

26 5. Plaintiffs and all other individuals currently and formerly employed under
27 common circumstances and facts hereafter will sometimes be collectively referred to as
28 members of the Plaintiff Class.

1 6. Plaintiffs are informed and believe and thereon allege that Defendant
2 Clearwater Nursery, Inc. is a California corporation that operates as an agricultural
3 business in and around San Luis Obispo County. Its principal place of business is located
4 at 887 Mesa Road, Nipomo, San Luis Obispo County, California 93444.

5 7. Defendant Mahmood Jafroodi is an individual employer operating an
6 agricultural business in San Luis Obispo, California. Plaintiffs allege that Defendant
7 Mahmood Jafroodi is a "person acting on behalf of an employer" pursuant to Labor Code
8 § 558 or a joint employer of Plaintiffs and other members of the Plaintiff Class.

9 8. Defendant Custom Labor Services, Inc. is a California corporation that
10 operates as an agricultural business in and around the Santa Barbara and San Luis Obispo
11 counties. Its principal place of business is located at 1204 West Cook Street, Santa
12 Maria, Santa Barbara County, California, 93458. Plaintiffs allege that Defendant,
13 Custom Labor Services, Inc., is a farm-labor contractor and is a joint employer of
14 Plaintiffs and other members of the Plaintiff Class.

15 9. Defendants directly or indirectly or through an agent or other person
16 exercise control or exercised control over Plaintiffs' and other members of the Plaintiff
17 Class' wages, hours and working conditions.

18 10. Defendants directly or indirectly or through an agent or other person
19 engaged, suffered or permitted Plaintiffs and other members of the Plaintiff Class to
20 work.

21 11. Plaintiffs are ignorant of the true names or capacities of the Defendants
22 sued herein under the fictitious names of DOES 1 through 20, inclusive, and therefore sue
23 Defendants under such fictitious names. Plaintiffs will amend this complaint to allege the
24 true names or capacities of these Defendants once they have been ascertained. Plaintiffs
25 are informed and believe and thereon allege that each Defendant is responsible in some
26 manner for the occurrences herein alleged, and that the damages herein alleged were
27 actually and proximately caused by each Defendant's conduct.

28 12. Plaintiffs are informed and believe and thereon allege that at all times

1 mentioned herein, Defendants, including DOES, were acting as the agent of every other
2 Defendant, and all acts alleged to have been committed by any Defendants were
3 committed on behalf of every other Defendant; and, at all times mentioned herein, each
4 alleged act was committed by each Defendant and/or agent, servant, or employee of each
5 Defendant, and each Defendant directed, authorized or ratified each such act. Plaintiffs
6 are informed and believe and thereon allege that each Defendant, including DOES, was
7 the agent, employee, coconspirator, business affiliate, subsidiary, parent entity, owner
8 and/or joint venturer of each other Defendant; and, in causing the injuries herein alleged,
9 each Defendant was acting at least in part within the course and scope of such agency,
10 employment, conspiracy, joint employership, alter ego status, and/or joint venture, and
11 with the permission and consent of each of the other Defendants.

12 III. FACTUAL ALLEGATIONS

13 A. Allegations of Class Representatives:

14 13. Clearwater Nursery employed each Plaintiff at varying times to work for
15 Defendants' business during the four years prior to the filing of this Complaint until
16 approximately mid-August 2010. Each Plaintiff worked for Defendants' business in San
17 Luis Obispo County, at the real property located at 887 Mesa Road, Nipomo, San Luis
18 Obispo County, California 93444. Plaintiffs were employed as a non-exempt, packaging
19 workers.

20 14. Plaintiffs are informed and believe and thereon allege that in 2011 and in
21 the four years preceding the filing of this complaint, each Defendant has employed other
22 individuals as nursery workers under the same or similar circumstances as Plaintiffs, and
23 has employed them at the same job site as Plaintiffs, including at the real property located
24 at 887 Mesa Road, Nipomo, San Luis Obispo County, California 93444. These
25 individuals, along with Plaintiffs, are referred to collectively as the Plaintiff Class in this
26 complaint.

27 15. Throughout Plaintiffs' tenure with Clearwater Nursery, Defendants
28 scheduled Plaintiffs' and other members of the Plaintiff Class' workdays. Plaintiffs and

1 members of the Plaintiff Class are or were instructed and required to report to work at
2 Defendants' principal place of business (nursery) at a time typically set on the previous
3 day of work.

4 16. Plaintiffs and other members of the Plaintiff Class are or were instructed
5 and required by Defendants to wait at the end of their workday an additional 30 to 45
6 minutes while clocked out so that supervisors could determine their start time for the next
7 work day before the Plaintiffs and other members of the Plaintiff Class were allowed to
8 depart from the nursery for the day.

9 17. Plaintiffs and other members of the Plaintiff Class have been or are
10 allowed to take only one compensated rest break per workday, scheduled before lunch,
11 but are not or have not been allowed to take a second rest break during the work period.

12 18. Defendants have failed to provide Plaintiffs and on information and belief
13 other members of the Plaintiff Class with a second full 30 minute meal period for each
14 workday in excess of 10 hours. When Plaintiffs and other members of the Plaintiff Class
15 miss their proper meal periods, they are not provided with additional compensation as
16 required by California Labor Code 512 and the applicable Wage Order.

17 19. As a result of the above, Defendants did not pay Plaintiffs and, on information
18 and belief, other members of the Plaintiff Class for all hours worked, correct overtime pay,
19 and/or for missed rest breaks and meal periods.

20 20. Throughout Plaintiffs' tenure with Clearwater Nursery, Defendants have
21 failed to maintain or furnish time records reflecting the true hours that Plaintiffs and, on
22 information and belief, other members of the Plaintiff Class worked, and have otherwise
23 failed to keep and provide required employment records in violation of California Labor
24 Code and Regulations.

25 21. Defendants failed to provide Plaintiffs with potable drinking water.

26 22. Plaintiffs are informed and believe and thereon allege that, at all times
27 material to this action and during the four years prior to the filing of this complaint, each
28 Defendant has failed to provide potable drinking water to other similarly employed

1 members of the Plaintiff Class, and, on information and belief, Plaintiffs further allege
2 that each Defendant currently does not provide potable water and as a result of this
3 practice Plaintiffs and other similar members of the Plaintiff Class are injured and
4 suffered a loss of money or property.

5 23. Throughout their tenure with Clearwater Nursery, Defendants have failed to
6 provide Plaintiffs with sufficient toilet and washing facilities.

7 24. Plaintiffs are informed and believe and thereon allege that, at all times
8 material to this action and during the four years prior to the filing of this complaint,
9 Defendants have failed to provide sufficient toilet and washing facilities for other
10 members of the Plaintiff Class and, on information and belief, Plaintiffs allege that each
11 Defendant currently does not provide sufficient toilet and washing facilities to members
12 of the Plaintiff Class and as a result of this practice Plaintiffs and other members of the
13 Plaintiff Class are injured and suffered a loss of money or property.

14 25. Defendants either terminated Plaintiffs or they voluntarily left their employment
15 with Defendants.

16 26. Defendants violated Labor Code §§201 or 202 by failing to pay Plaintiffs
17 all wages due on the date of employees' involuntary termination or within 72 hours of
18 receipt of notice of each employee's voluntary termination.

19 27. Plaintiffs are informed and believe and thereon allege that Defendant
20 Mahmood Jafroodi ("Jafroodi") is now, and was at all times mentioned herein, doing
21 business as Clearwater Nursery, Inc., which is a business of unknown form and which
22 maintains its headquarters and principal place of business in Nipomo, County of San Luis
23 Obispo, California.

24 28. Plaintiffs are informed and believe and thereon allege that Defendant
25 Jafroodi is an individual who is the owner or owner of the majority of shares of stock or
26 major interest holder of Defendant Clearwater Nursery, Inc. Plaintiffs further allege that
27 Defendant Jafroodi is responsible for the occurrences herein alleged and that the resulting
28 damages were proximately caused by the conduct of Clearwater Nursery, Inc., Custom

1 Labor Services, Inc. and Jafroodi.

2 29. There exists, and at all times herein mentioned there existed, a unity of
3 interest and ownership between Clearwater Nursery, Inc., and Jafroodi, such that any
4 individuality and separateness between Defendant Jafroodi and Clearwater Nursery, Inc.
5 ceased. Defendant Clearwater Nursery, Inc. is the alter ego of Defendant JAFROODI, in
6 that Plaintiffs are informed and believe and thereon allege that JAFROODI carried on his
7 business in the corporate name exactly as he had conducted it previous to incorporation,
8 exercising complete control and dominance of such business to such an extent that any
9 individuality or separateness of Defendant Clearwater Nursery, Inc. and Defendant
10 JAFROODI does not, and at all times herein mentioned, did not exist.

11 30. Adherence to the fiction of the separate existence of the Defendant Clearwater
12 Nursery, Inc. distinct from Defendant JAFROODI would permit an abuse of the corporate
13 privilege and would sanction fraud or promote injustice in that Plaintiffs are informed and
14 believe and thereon allege that the unlawful failure to pay wages and other unlawful and
15 fraudulent action, as herein alleged, was a direct cause of Defendant JAFROODI's
16 actions.

17 31. Plaintiffs therefore allege, on information and belief, that Defendant
18 JAFROODI directly engaged in the unlawful conduct alleged in this Complaint by
19 personally directing such conduct, giving orders directly to Plaintiffs and other members
20 of the Plaintiff Class, and through Defendant JAFROODI's acts and omissions while
21 directly supervising Plaintiffs and other members of the Plaintiff Class, which resulted in
22 the California wage and hour violations alleged herein.

23 32. The additional factual allegations below are likely to have evidentiary
24 support after a reasonable opportunity for further investigation and discovery.

25 33. Plaintiffs are aggrieved employees as defined in Labor Code § 2699.

26 34. Defendants committed the following violations of the California Labor
27 Code against Plaintiffs and, on information and belief, against the Plaintiff Class:

28 a. Defendants violated Labor Code §§210, 216, 221, 1197, 1198 and

558, and 8 Cal. Code of Regulations §§ 11130 by failing to pay
Plaintiffs and, on information and belief, the Plaintiff Class all
wages due for all hours worked.

b. Defendants violated Labor Code § 226 by failing to maintain and
furnish to Plaintiffs and, on information and belief, the Plaintiff
Class accurate time records showing all hours worked, including
but not limited to the actual time worked and the actual time
scheduled and spent waiting for the next day's schedule.

c. Defendants violated Labor Code §226.7, 512 and 558 by failing to
permit and provide Plaintiffs and, on information and belief, the
Plaintiff Class all rest and meal periods in accordance with IWC
Wage Order 13.

d. Defendants violated provisions of IWC Wage Order 13 and Labor
Code §§ 510, 558, 1174, 1197, 1198 and 1199 by failing to pay
minimum and overtime wages for all hours worked; failing to
authorize and permit rest periods and failing to keep accurate
information with respect to all hours worked, including the
beginning and ending of each work and meal period.

e. Defendants violated Labor Code § 201 and/or 202 by failing to pay
Plaintiffs, and on information and belief, the Plaintiff Class all
wages due on the date of each employee's involuntary termination
or within 72 hours of receipt of notice of each employee's
voluntary termination.

f. Defendants violated Labor Code § 6400 by failing to provide a safe
and healthful employment environment to Plaintiffs, and on
information and belief, the Plaintiff Class.

g. violation of California Labor Code § 2802 by failing to indemnify
members of Plaintiff Class for all necessary expenditures or losses

1 incurred by members of Plaintiff Class in direct consequences of
2 the discharge of their duties and their obedience to the direction of
3 Defendants.

4 h. violation of California Labor Code § 450 by compelling or
5 coercing members of Plaintiff Class to patronize Defendant in the
6 purchase of things of value.

7 **IV. CLASS ALLEGATIONS**

8 35. Proposed Class. Pursuant to California Code of Civil Procedure §382,
9 Plaintiffs Carolina Ramirez, Luis Angel Colunga Gocabar, Nelly Gonzales, Margarita
10 Hernandez, Rigoberto Saavedra, and Liney Silva, as Class Representatives, bring this
11 action on their own behalf and on behalf of a class comprised of: all persons who have
12 worked as nursery workers not exempt from minimum wage and overtime laws and
13 covered by IWC Wage Order 13,8 Cal. Code of Regulations §11130 ("nonexempt nursery
14 packaging workers") at Clearwater Nursery in San Luis Obispo County, at any time
15 during the period beginning four years prior to the filing of the complaint in this action to
16 the present ("Plaintiff Class").

17 36. Superiority of Class Action Mechanism. Class certification is appropriate
18 because Defendants have implemented a scheme that is generally applicable to the
19 Plaintiff Class, making it appropriate to issue final injunctive relief and corresponding
20 declaratory relief with respect to the Plaintiff Class as a whole. Class certification is also
21 appropriate because the common questions of law and fact predominate over any
22 questions affecting only individual members of the class. Each member of the proposed
23 Plaintiff Class has been injured and is entitled to recover. Class action treatment will
24 allow those similarly situated persons to litigate their claims in the manner that is most
25 efficient and economical for the parties and the judicial system. Further, the prosecution
26 of separate actions against Defendants by individual class members would create a risk of
27 inconsistent or varying adjudications that would establish incompatible standards of
28 conduct for Defendants. Plaintiffs are informed and believe and thereon allege that the

1 proposed Plaintiff Class consists of more than 200 current and former employees.
2 Members of the class are ascertainable but so numerous that joinder is impracticable. For
3 all these and other reasons, a class action is superior to other available methods for the
4 fair and efficient adjudication of the controversy set forth in this complaint.

5 37. Community of Interest. Defendants, by their practices and policies, have
6 violated the rights of their employees under California's Unfair Competition Law
7 (Business & Professions Code §§17200 *et seq.*), and the California Labor Code. The
8 questions raised by this complaint are of common or general interest to the Plaintiff Class
9 members, who have a well-defined community of interest in the questions of law and fact
10 raised in this action. On information and belief, the common questions of law and fact
11 affecting the rights of all Class members include, but are not necessarily limited to:

- 12 a. Whether Defendants' pay practices conform to the requirements of
13 the California Labor Code;
- 14 b. Whether Defendants violated Labor Code §§ 510, 1198 and the
15 applicable Wage Order by failing to pay the overtime premiums
16 owed to non-exempt employees who worked in excess of eight (8)
17 hours in one work day or forty (40) hours in one work week;
- 18 c. Whether Defendants failed to pay members of the Plaintiff Class
19 their full wages when due upon termination in violation of Labor
20 Code §§ 201 and 202;
- 21 d. Whether Defendants failed to pay minimum wages to members of
22 the Plaintiff Class for all hours worked, as required by Labor Code
23 §§ 1182.11-1182.13, 1197, and the minimum wage provisions of
24 Wage Order 13-2001;
- 25 e. Whether Defendants are required to pay liquidated damages to
26 Class members who were not paid the minimum wage for all hours
27 worked as required by Labor Code § 1194.2;
- 28 f. Whether Defendants are required to pay waiting time penalties to

1 Class members who were not paid wages due upon termination
2 during the relevant statutory period, as required by Labor Code §
3 203;

4 g. Whether Defendants violated Labor Code § 226.7 and the meal and
5 rest period provisions of Wage Order 13 and Labor Code § 512 by
6 failing to provide adequate off-duty meal periods and/or by failing
7 to authorize and permit members of the Plaintiff Class to take all
8 rest periods to which they were entitled;

9 h. Whether Defendants violated Labor Code § 226.7(b) by failing to
10 pay members of the Plaintiff Class the premium compensation
11 mandated by that statute for missed meal and rest periods;

12 i. Whether Defendants failed to provide accurate itemized wage
13 statements to members of the Plaintiff Class, as required by Labor
14 Code § 226;

15 j. Whether Defendants violated Labor Code § 1174 and the
16 record keeping provisions of the applicable Wage Order by failing
17 to keep accurate records of employees' hours of work and other
18 required documentation;

19 k. What relief is necessary to remedy Defendants' unfair and
20 unlawful conduct as herein alleged;

21 m. Whether Defendants violated California Labor Code § 2802 by
22 failing to indemnify members of Plaintiffs Class for all necessary
23 expenditures or losses incurred by members of Plaintiff Class in
24 direct consequences of the discharge of their duties and their
25 obedience to the direction of Defendants;

26 n. Whether Defendants violated California Labor Code § 450 by
27 compelling or coercing members of Plaintiff Class to patronize
28 Defendant in the purchase of things of value; and,

1 o. Other questions of law and fact.

2 38. Adequacy of Plaintiffs as Class Representatives. The Class
3 Representatives can adequately and fairly represent the interests of the Plaintiff Class as
4 defined above because their individual interests are consistent with, not antagonistic to,
5 the interests of the class. The claims of the Plaintiffs are typical of the claims of the class
6 as a whole in that they arise from Defendants' overall failure to conform their wage and
7 hour practices to the requirements of the California Labor Code and the applicable Wage
8 Order. Each of the Plaintiffs was employed by Defendants as a nonexempt nursery
9 packaging worker at Clearwater Nursery in San Luis Obispo County during the relevant
10 statutory period. Each of the Plaintiffs was underpaid because of Defendants' unlawful
11 employment policies and practices.

12 39. Adequacy Of Counsel For The Class. Counsel for Plaintiffs possess the
13 requisite resources and ability to prosecute this case as a class action and are experienced
14 labor and employment attorneys who have successfully litigated other cases and class
15 actions involving similar issues.

16 **V. CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGE**

19 **(Cal. Lab. Code 1197, 1194(a), 1194.2 & Wage Order 13**

20 **ALL PLAINTIFFS AND PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

21 40. Plaintiffs incorporate all preceding paragraphs as though fully set forth
22 herein.

23 41. At all times relevant to this action, Plaintiffs and other members of the
24 Plaintiff Class worked as assembly-line workers packaging for Defendants' business
25 producing blooming plants for home decor in San Luis Obispo County.

26 42. At all times relevant to this action each Defendant failed to compensate
27 Plaintiffs and the Plaintiff Class for all work performed, in violation of Industrial Welfare

1 Labor Code § 1194.

2 43. At all times relevant to this action, each Defendant failed to compensate
3 Plaintiffs and other members of the Plaintiff Class for all hours worked each workday,
4 underpaying Plaintiffs by one-half hour (½) to at least three and one half (3 ½) hours
5 worth of wages per workday, in violation of Industrial Welfare Commission Wage Order
6 13 (8 California Code of Regulations § 11130) and California Labor Code §§ 510, 558
7 and 1197.

8 44. At all times relevant to this action, each Defendant failed to compensate
9 Plaintiffs and other members of the Plaintiff Class for all hours worked each workday,
10 underpaying Plaintiffs by requiring them to wait at the end of a workday for the next
11 work day start time, in violation of Industrial Welfare Commission Wage Order 13 (8
12 California Code of Regulations § 11130) and California Labor Code and Labor Code §§
13 510, 558 and 1197.

14 45. As such, Plaintiffs, individually and on behalf of other individuals
15 employed under common circumstances and facts, bring this action for minimum wages,
16 liquidated damages, interest, and costs of suit pursuant to 1194(a) and 1194.2. Plaintiffs,
17 individually and on behalf of other individuals employed under common circumstances
18 and facts, also bring this action for attorney's fees pursuant to 1194(a).

19 46. WHEREFORE, Plaintiffs and other members of the Plaintiff Class are
20 entitled to recover the unpaid minimum wages, liquidated damages in an amount equal to
21 the minimum wages unlawfully unpaid pursuant to California Labor Code § 1194.2,
22 interest thereon, costs of suit; as well as reasonable attorneys' fees.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME AND DOUBLE TIME COMPENSATION**

25 **(CALIFORNIA LABOR CODE 510, 1194)**

26 **ALL PLAINTIFFS AND PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

27 47. Plaintiffs incorporate all preceding paragraphs as though fully set forth
28 herein.

1 worked for periods of more than five hours without a duty free meal period of no less
2 than 30 minutes and were not provided full ten minute rest periods for each four (4) hour
3 period of work while in the employ of Defendants.

4 54. Labor Code § 512 and Wage Order 13 provide that no employer shall
5 employ any person for a work period of more than five (5) hours without a meal period of
6 not less than 30 minutes, except that when a work period of not more than six (6) hours
7 will complete the day's work the meal period may be waived by mutual consent of the
8 employer and employee. Pursuant to Labor Code § 226.7, if an employer fails to provide
9 an employee a meal period in accordance with the applicable provisions of this Order, the
10 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
11 compensation for each workday that the meal period is not provided.

12 55. Defendants violated California Labor Code §§ 226.7 and 512 by failing to
13 provide meal periods mandated by Labor Code § 226.7 and Wage Order. As such,
14 Defendants are liable for one hour of additional wages at the employees' regular rate of
15 compensation for each work day that the meal periods were not lawfully provided.

16 56. Wage Order 13 states that every employer shall authorize and permit all
17 employees to take rest periods, which insofar as practicable shall be in the middle of each
18 work period. The authorized rest period time shall be at the rate of ten (10) minutes net
19 rest time per four (4) hours or major fraction thereof. However, a rest period need not be
20 authorized for employees whose total daily work time is less than three and one half (3 ½)
21 hours. Authorized rest period time shall be counted, as hours worked, for which there
22 shall be no deduction from wages. If an employer fails to provide an employee a rest
23 period in accordance with the applicable provisions of this Order, the employer shall pay
24 the employee one (1) hour of pay at the employees regular rate of compensation for each
25 rest period is not provided.

26 57. At all times relevant to this action, Defendants did not authorize or permit
27 Plaintiffs and, on information and belief, other members of the Plaintiff Class to take all
28 rest periods as mandated by California Labor Code § 226.7 and Wage Order 13.

1 58. Therefore, Defendants violated California Labor Code § 226.7 by failing
2 to provide rest periods mandated by Labor Code § 226.7 and Wage Order 13, and by
3 failing to provide one hour of additional wages at members of the Plaintiff Class' regular
4 rate of compensation for each rest period not provided.

5 59. By failing to keep adequate time records required by sections Labor Code
6 §§ 226 and 1174(d), Defendants have injured Plaintiffs and other members of the Plaintiff
7 Class and made it difficult to calculate the unpaid additional wages due Plaintiffs and
8 other members of the Plaintiff Class.

9 60. As a result of the unlawful acts of Defendants, Plaintiffs and other
10 members of the Plaintiff Class have been deprived of premium wages in amounts to be
11 determined at trial, and are entitled, under Labor Code §§ 226.7, 512, and 1194, and the
12 Wage Orders, to recovery of such amounts, plus interest and penalties thereon and costs
13 of suit; as well as attorneys' fees.

14 61. WHEREFORE, Plaintiffs request relief as described herein and below.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES DUE AT TERMINATION IN TIMELY MANNER**

17 **(CALIFORNIA LABOR CODE §§ 201, 202 & 203)**

18 **ALL PLAINTIFFS AND PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

19 62. Plaintiffs incorporate all preceding paragraphs as though fully set forth
20 herein.

21 63. Defendants failed to pay Plaintiffs, and on information and belief, other
22 members of the Plaintiff Class as herein alleged.

23 64. California Labor Code §§ 201 and 202 provide that all wages are due an
24 employee immediately upon discharge or within seventy-two (72) hours of termination
25 where an employee quits without providing seventy-two (72) hours' notice.

26 65. Defendants failed to pay, in a timely manner, Plaintiffs and, on
27 information and belief, other members of the Plaintiff Class all of their wages due for
28 work performed, and this failure continued through the time in which Plaintiffs and other

1 members of the Plaintiff Class quit or were discharged from their employment with
2 Defendants. As a result, Defendants have violated California Labor Codes §§
3 201 and 202.

4 66. California Labor Code § 203 provides for a penalty of one day of wages,
5 for up to thirty (30) days, for each day the employer willfully fails to pay terminated
6 employees.

7 67. Defendants violated California Labor code §§ 201 and 202 by failing to
8 pay employees who quit or were discharged all of the wages due pursuant to the time
9 lines provided in those sections. Defendants willfully failed to pay all wages due as the
10 failure to pay was not inadvertent or accidental.

11 68. Plaintiffs and, on information and belief, other members of the Plaintiff
12 Class have not received all compensation due, entitling them to penalties under Labor
13 Code §203.

14 69. More than 30 days have passed since Plaintiffs and, on information and
15 belief, other members of the Plaintiff Class have left Defendants' employ without
16 receiving payment pursuant to Labor Code § 201 or 202, as applicable. As a consequence
17 of Defendants' willful conduct in not paying all earned wages, Plaintiffs and certain
18 members of the Plaintiff Class are entitled to thirty (30) working days' wages under
19 Labor Code § 203.

20 70. WHEREFORE, Plaintiffs and other members of the Plaintiff Class are
21 entitled to Labor Code § 203 penalties in amounts to be determined at trial.

22 **FIFTH CAUSE OF ACTION**

23 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH**

24 **ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS**

25 **(CALIFORNIA LABOR CODE § 226)**

26 **ALL PLAINTIFFS AND PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

27 71. Plaintiffs incorporate all preceding paragraphs as though fully set forth
28 herein.

1 72. California Labor Code §226(a) requires employers to furnish each
2 employee a pay stub or other receipt itemizing the gross wages earned, total hours
3 worked, number of piece rates if applicable, applicable wage rates, all deductions, net
4 wages, pay period, employer name and address, and the employee's personal information,
5 including name and social security number.

6 73. Defendants failed to provide accurate itemized statements Plaintiffs and
7 the Plaintiff Class because the wage statements:

8 a. Falsely understate the gross wages earned by failing to pay for all
9 hours worked;

10 b. Falsely understate the total hours worked by ignoring the total of
11 hours actually worked;

12 c. Falsely understate the net wages earned by failing to pay for all
13 hours worked; and

14 d. Falsely understate the number of hours worked at each hourly rate.

15 74. California Labor Code § 226(e) and (g) provide that each employee may
16 recover fifty dollars (\$50) for an initial violation and one hundred dollars (\$100)
17 thereafter up to four thousand dollars (\$4,000), costs and reasonable attorneys fees for a
18 knowing violation of the obligation to provide a proper pay stub or other itemized wage
19 receipts. Additionally, an employee may also seek injunctive relief to ensure compliance
20 with this requirement.

21 75. By failing to keep adequate time records required by Labor Code § 226,
22 Defendants have injured Plaintiffs and other members of the Plaintiff Class, and made it
23 difficult to calculate the unpaid wages due Plaintiffs and other members of the Plaintiff
24 Class, and each Plaintiff and member of the Plaintiff Class is entitled to up to \$4,000.00
25 in penalties.

26 76. WHEREFORE, Plaintiffs and other members of the Plaintiff Class are
27 entitled to Labor Code § 226 penalties in an amount to be determined at trial not to
28 exceed \$4,000 per Plaintiff and member of the Plaintiff Class, injunctive relief under

1 California Labor Code § 226(g) cost of suit; as well as attorneys' fees.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE NECESSARY PROTECTIVE CLOTHING AND**
4 **EQUIPMENT AND FAILURE TO INDEMNIFY EMPLOYEES FOR WORK-**
5 **RELATED EXPENSES**

6 **(LABOR CODE §2802; WAGE ORDER 13-2001 [8 CAL. CODE OF**
7 **REGULATIONS §11140])**

8 **ALL PLAINTIFFS AND PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

9 77. Plaintiffs incorporate all preceding paragraphs as though fully set forth
10 herein.

11 78. This action is brought by Plaintiffs and the Plaintiff Class under California
12 Labor Code §2802 which provides employers shall indemnify their employees for all
13 necessary expenditures or losses incurred by the employees in direct consequence of the
14 discharge of their duties or of their obedience to the directions of the employer.

15 79. This action is additionally brought under California Wage order 13-2001,
16 which provides that "When tools or equipment are required by the employer or are
17 necessary to the performance of a job, such tools and equipment shall be provided and
18 maintained by the employer, except that an employee whose wages are at least two times
19 the minimum wage provided herein may be required to provide and maintain hand tools
20 and equipment customarily required by the trade or craft." Wage Order 13-2001,
21 paragraph 9(B).

22 80. At times during the relevant statutory period, Defendants did not pay
23 Plaintiffs and members of the Plaintiff Class at least twice the applicable state minimum
24 wage. Therefore, at all relevant times hereto, Defendants were required to provide and
25 maintain all tools and equipment necessary to the performance of Plaintiffs' and Plaintiff
26 Class members' jobs and to protect their health and safety on the job.

27 81. Plaintiffs and the Plaintiff Class were required by Defendants to expend
28 monies in direct consequence of the discharge of their duties or of their obedience to the

1 | directions of the employer for items including, but not limited to, time cards, gloves,
2 | aprons, belts, clips, safety belts, and safety glasses, during their employment with
3 | Defendants. Defendant failed to properly reimburse Plaintiffs and the Plaintiff Class for
4 | those expenditures.

5 | 82. As a direct and proximate result of Defendants' conduct as alleged above,
6 | Plaintiffs and the Plaintiff Class have sustained damages in the amount of the monies
7 | expended by them in direct consequence of the discharge of their duties or of their
8 | obedience to the directions of the employer for items including, but not limited to, time
9 | cards, gloves, aprons, belts, clips, safety belts, and safety glasses. As such, Plaintiffs and
10 | the Plaintiff Class are entitled to expense reimbursement in amounts according to proof,
11 | plus attorney fees.

12 | **SEVENTH CAUSE OF ACTION**

13 | **UNFAIR AND UNLAWFUL ACTS IN VIOLATION OF**

14 | **UNFAIR COMPETITION LAW**

15 | **(CALIFORNIA BUS. & PROF CODE §17200 ET SEQ.)**

16 | **ALL PLAINTIFFS AND PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

17 | 83. Plaintiffs incorporate all preceding paragraphs as though fully set forth
18 | herein.

19 | 84. By this cause of action, Plaintiffs seek to enforce important rights affecting
20 | the public interest.

21 | 85. Plaintiffs allege that each Defendant hired Plaintiffs and, on information
22 | and belief, other current and former members of the Plaintiff Class pursuant to oral and
23 | written contracts of employment entered into in San Luis Obispo County, and that
24 | Plaintiffs and other members of the Plaintiff Class worked for Defendants as non-exempt
25 | employees performing various tasks, including, but not limited to, nursery line and/or
26 | packaging work.

27 | 86. Plaintiffs and other members of the Plaintiff Class suffered injury in fact
28 | and have lost money as a result of Defendants' unfair competition alleged herein.

1 87. Defendants are engaged in unlawful and unfair activity prohibited by
2 Business and Professions Code § 17200 et seq. The actions of Defendants as alleged
3 within this complaint, constitute unlawful and unfair business practices with the meaning
4 of Business and Professions Code § 17200 et seq.

5 88. As described above, Defendants have violated the following California
6 laws:

- 7 a. California Labor Code § 201 by failing to pay all wages earned and
8 unpaid at the time of Plaintiffs and certain members of the
9 Plaintiff Class' discharge from employment by Defendants;
- 10 b. California Labor Code § 202 by failing to pay all wages earned and
11 unpaid within 72 hours of the time of quitting by Plaintiffs and
12 certain members of the Plaintiff Class from their employment by
13 Defendants;
- 14 c. California Labor Code § 206 by failing to pay, without condition
15 and within the time set by the applicable article, all wages, or parts
16 thereof, which Defendants conceded to be due to Plaintiffs and
17 members of the Plaintiff class;
- 18 d. California Labor Code § 216 by willfully refusing to pay wages
19 due and payable to Plaintiffs and members of the Plaintiff class
20 after demand was made while having the ability to pay, and by
21 falsely denying the amount or validity thereof, or that the same is
22 due, with intent to secure for itself any discount upon such
23 indebtedness, and with intent to annoy, harass, oppress, hinder,
24 delay, or defraud, the Plaintiffs and members of the Plaintiff Class
25 to whom such indebtedness is due;
- 26 e. California Labor Code § 223 by secretly paying a lower wage to
27 Plaintiffs and members of the Plaintiff Class while purporting to
28 pay the wage designated by statute or by contract;

- 1 f. California Labor Code § 226 by failing to provide Plaintiffs and
2 members of the Plaintiff Class with accurate wage statements;
- 3 g. California Labor Code § 226.6 by knowingly and intentionally
4 violating the provisions of California Labor Code § 226;
- 5 h. California Labor Code § 226.7 by requiring Plaintiffs and
6 members of the Plaintiff Class to work during meal and rest
7 periods mandated by the applicable Wage Order and failing to
8 provide said Plaintiffs and members of the Plaintiff Class one (1)
9 hour additional wages at the non-exempt employees' regular rate of
10 compensation for each meal or rest period not provided;
- 11 I. California Labor Code § 510 by failing to compensate Plaintiffs
12 and members of the Plaintiff Class at the rate of no less than one
13 and one-half times the regular rate of pay for an employee for all
14 work in excess of eight (8) hours in one workday and any work in
15 excess of forty (40) hours in any workweek and the first eight (8)
16 hours worked on the seventh day of work in any one workweek,
17 and by failing to compensate Plaintiffs and members of the
18 Plaintiff Class at the rate of no less than twice the regular rate of
19 pay for an employee for work in excess of twelve (12) hours in one
20 day and any work in excess of eight (8) hours on any seventh day
21 of a workweek;
- 22 j. California Labor Code § 512 by failing to provide members of the
23 Plaintiff Class with a meal period of not less than 30 minutes for
24 every work period of more than five hours per day and by not
25 providing members of the Plaintiff Class with a second meal
26 period of not less than 30 minutes for a work period of more than
27 10 hours per day;
- 28 k. California Labor Code § 1182.11 and 1197 by failing to pay at least

the minimum wage for all hours worked by Plaintiffs and
members of the Plaintiff Class;

- l. California Labor Code §1198 by failing to pay minimum and/or overtime wages for all hours worked by Plaintiffs and members of the Plaintiff Class;
- m. California Labor Code § 2802 by failing to indemnify members of Plaintiffs Class for all necessary expenditures or losses incurred by members of Plaintiff Class in direct consequences of the discharge of their duties and their obedience to the direction of Defendants.
- n. California Labor Code § 450 by compelling or coercing members of Plaintiff Class to patronize Defendant in the purchase of things of value.

89. Defendant failed to provide Plaintiffs and members of the Plaintiff Class with a safe and healthful working place of employment as required by Labor Code §6400 and specifically:

- a. failed to provide potable water, as required by 8 Cal. Code Regs. § 3363;
- b. Failed to provide members of the Plaintiff Class with toilet, sanitary and washing facilities, as required by 8 Cal. Code Regs §§ 3364, 3365 and 3366.

90. Defendants' acts and omissions alleged herein also constitute unfair and unlawful practices in violation of Cal. Bus. & Prof. Code §§17200 et seq. because Defendants' practices violate the above noted laws, and/or violate an established public policy and/or the practice is immoral, unethical, oppressive, unscrupulous and substantially injurious to Plaintiffs, other members of the Plaintiff Class, and the public.

91. Plaintiffs are entitled to an injunction and other equitable relief against such unlawful practices to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

1 92. As a result of their unlawful acts, Defendants have reaped and continue to
2 reap unfair benefits and unlawful profits at the expense of Plaintiffs and other members
3 of the Plaintiff Class. Defendants should be enjoined from this activity and ordered to
4 restore to Plaintiffs and other members of the Plaintiff Class the wrongfully withheld
5 wages pursuant to Business and Professions Code §17203. Plaintiffs are informed and
6 believe, and thereon allege, that Defendants are unjustly enriched through their failure to
7 pay legal wages, and/or other compensation. Plaintiffs are informed and believe, and
8 thereon allege, that Plaintiffs and other members of the Plaintiff Class are prejudiced by
9 Defendants' unfair business practices.

10 93. As a direct and proximate result of the unfair business practices of
11 Defendants, and each of them, Plaintiffs and the other members of the Plaintiff Class
12 have lost money and are entitled to equitable and injunctive relief, including full
13 restitution of all wages which have been unlawfully withheld from Plaintiffs and other
14 members of the Plaintiff Class as a result of the business acts and practices described
15 herein and an order enjoining Defendants to cease and desist from engaging in the
16 practices described herein.

17 94. The unlawful and unfair conduct alleged herein is continuing, and there is
18 no indication that Defendants will not continue such activity into the future. Plaintiffs
19 alleged that if Defendants are not enjoined from the conduct set forth in this Complaint,
20 they will continue to unlawfully require members of the Plaintiff Class to work "off the
21 clock" and without compensation, will continue to require members of the Plaintiff Class
22 to work during rest or meal periods without providing the appropriate additional
23 compensation in lieu thereof; will continue to fail to pay accrued vacation pay; will
24 continue to underpay Plaintiffs and members of the Plaintiff Class for overtime hours
25 worked; and will continue with the remainder of violations described above.

26 95. Plaintiffs further request that the court issue a preliminary and permanent
27 injunction prohibiting Defendants from requiring Plaintiffs and other members of the
28 Plaintiff Class to work "off the clock" and without compensation, prohibiting other

wrongful conduct which is the subject of this Complaint and which may later be discovered in the course of litigation. As set forth above, each Defendant's unlawful business practices present a continuing threat to certain Plaintiffs and members of the Plaintiff Class, and cause irreparable harm that cannot be adequately remedied at law.

96. WHEREFORE, Plaintiffs and other members of the Plaintiff Class they seek to represent request relief as described herein and below.

EIGHTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL ACTS IN VIOLATION OF

UNFAIR COMPETITION LAW

(CALIFORNIA BUS. & PROF CODE §17202 AND LABOR CODE §§ 203 and 226)

ALL PLAINTIFFS AND PLAINTIFF CLASS AGAINST ALL DEFENDANTS

97. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

98. Defendants' failure to timely pay wages upon termination violated and violates California Labor Code §§ 201 and 202.

99. California Labor Code §203 provides that employers who fail to pay wages due in violation of California Labor Code §§ 201 and 202 are liable for one day's wages each day after termination that the wages remain unpaid up to a maximum of thirty (30) days. Defendants' failure to pay timely wages upon the termination or voluntary quit of Plaintiffs and members of the Plaintiff Class violates the California Labor Code §§ 201 and 202. California Business and Professions Code §17202 entitles Plaintiffs and each other such person to recover waiting time penalties pursuant to California Labor Code § 203, in amounts to be proven at trial.

100. Defendants' failure to maintain adequate time records of Plaintiffs' and members of the Plaintiff Class' work and to provide Plaintiffs and members of the Plaintiff Class with itemized pay stubs or receipts violates California Labor Code § 226.

101. California Labor Code § 226 provides that an employer who fails to provide employees with an itemized pay stub or wage receipt is liable for fifty dollars

1 (\$50) for the first violation and one hundred dollars (\$100) for every violation thereafter
2 up to a total of four thousand dollars (\$4,000). Defendants' failure to provide Plaintiffs
3 and members of the Plaintiff Class with itemized pay stubs or wage receipts violates
4 California Labor Code § 226.

5 102. California Business and Professions Code §17202 entitles Plaintiffs and
6 each other such person to recover the penalties provided by California Labor Code §§203
7 and 226 in amounts to be proven at trial.

8 **NINTH CAUSE OF ACTION**

9 **VIOLATIONS OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**

10 **(CALIFORNIA LABOR CODE § 2698 ET SEQ.)**

11 **ALL PLAINTIFFS AND PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

12 103. Plaintiffs incorporate all preceding paragraphs as though fully set forth
13 herein.

14 104. Plaintiffs submit this Amended Complaint to include allegations pursuant
15 to Labor Code § 2699 et seq. (The Private Attorney General Act). Labor Code §
16 2699.3(a)(2)(C) provides that, notwithstanding any other provision of law, Plaintiffs may
17 as a matter of right amend an existing complaint to add a cause of action arising under §§
18 2699 et seq.

19 105. Plaintiffs and Plaintiff Class are aggrieved employees as defined in Labor
20 Code §2699(a).

21 106. Labor Code § 2699(f) provides:

22 For all provisions of this code except those for which a civil
23 penalty is specifically provided, there is established a civil penalty for a
24 violation of these provisions, as follows: . . . (2) If, at the time of the
25 alleged violation, the person employs one or more employees, the civil
26 penalty is one hundred dollars (\$100) for each aggrieved employee per pay
27 period for the initial violation and two hundred dollars (\$200) for each
28 aggrieved employee per pay period for each subsequent violation.

1 | Plaintiffs and Plaintiff Class seek civil penalties as provided under the applicable Labor
2 | Code sections for violations of the Labor Code alleged herein pursuant to Labor Code §
3 | 2699(a). To the extent that any violation alleged herein does not carry a penalty, Plaintiffs
4 | and Plaintiff Class seek civil penalties pursuant to Labor Code § 2699(f) for Defendants
5 | violations of those sections. The pre-lawsuit notice requirements set forth in Labor Code
6 | § 2699.3 have been satisfied by written notice by certified mail to Defendants and to the
7 | Labor and Workforce Development Agency of the Labor Code and IWC Wage Order
8 | violations averred herein. The Agency failed to timely notify Plaintiffs it would
9 | investigate these violations.

10 | 107. Plaintiffs seeks penalties on behalf of themselves and on behalf of the
11 | Plaintiff Class as provided by Labor Code § 2699(I).

12 | 108. Defendants are liable to Plaintiffs and Plaintiff Class for the civil penalties
13 | set forth in this Amended Complaint. Plaintiffs and Plaintiff Class are also entitled to an
14 | award of attorneys' fees and costs as set forth below.

15 | **VI. ATTORNEYS' FEES AND COSTS**

16 | 109. Plaintiffs hereby re-allege and incorporate by reference each and every
17 | allegation contained in paragraphs 1 – 108, as though fully set forth herein. Plaintiffs are
18 | entitled to recover attorneys' fees and costs pursuant to California law, including, without
19 | limitation, California Code of Civil Procedure §1021.5, and Labor Code §§ 226(g), 1194,
20 | 2699 (g) and 2802. Enforcement of statutory provisions enacted to protect workers and to
21 | ensure prompt payment of wages due employees is a fundamental public policy in
22 | California. Consequently, Plaintiffs' success in this action will result in the enforcement
23 | of important rights affecting the public interest and will confer a significant benefit upon
24 | the public.

26 | **VII. PRAYER FOR RELIEF**

27 | WHEREFORE, Plaintiffs on behalf of themselves and the Plaintiff Class pray for
28 | judgment against Defendants and each of them as follows:

As to the First Cause of Action:

1. For an award of all unpaid minimum wages in an amount to be proven at trial.
2. For an award of liquidated damages in an amount equal to the minimum wages in an amount to be proven at trial.
3. For prejudgment interest pursuant to Labor Code § 218.6.

As to the Second Cause of Action:

4. For an award of all unpaid overtime wages in an amount to be proven at trial.
5. For prejudgment interest pursuant to Labor Code § 218.6.

As to the Third Cause of Action:

6. For an award equal to one (1) hour of wages for each required rest period Defendants failed to provide in an amount to be proven at trial.
7. For an award equal to one (1) hour of wages for each required meal period Defendants failed to provide in an amount to be proven at trial.
8. For prejudgment interest pursuant to Labor Code § 218.6.

As to the Fourth Cause of Action:

9. For an award of waiting time penalties in an amount equal to thirty (30) times the daily rate of pay, according to proof at trial.

As to the Fifth Cause of Action:

10. For an award of (a) actual damages for Defendants' failure to maintain time records reflecting all hours worked in an amount to be proven at trial, (b) statutory amounts, or in the alternative (c) \$50.00 for the first violation and \$100.00 for each subsequent violation up to a maximum of \$4,000.00, per each Plaintiff.
11. For an award of injunctive relief ordering Defendants to comply with Labor Code § 226.
12. For further equitable relief according to proof.

As to the Sixth Cause of Action:

13. For reimbursement of all expenses incurred in direct consequence of the discharge of their duties or of their obedience to the directions of the employer according to proof, together with interest thereon;

As to the Seventh Cause of Action:

14. For an award of a preliminary and permanent injunction ordering Defendants to cease the unlawful and unfair business practices as heretofore alleged.
15. For restitution to Plaintiffs and the Plaintiff Class in amounts to be proven at trial.
16. For enforcement and an award of penalties to Plaintiffs and the Plaintiff Class in amounts to be proven at trial.

As to the Eighth Cause of Action

17. For an award of waiting time penalties for each Plaintiff and the Plaintiff Class in an amount equal to thirty (30) times the daily rate of pay, according to proof to at trial.
18. For an award of (a) actual damages for Defendants failure to maintain time records reflecting all hours worked in an amount to be proven at trial, (b) statutory amounts, or in the alternative (c) \$50.00 for the first violation and \$100.00 for each subsequent violation up to a maximum of \$4,000.00, per each Plaintiff and the Plaintiff Class.

As to the Ninth Cause of Action

19. For all provisions of this code violated as described above except those for which a civil penalty is specifically provided, a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.
20. For all provisions of this code violated as described above for which a

1 civil penalty is specifically provided, civil penalties for each aggrieved
2 employee as specifically provided by statute

3 As to All Causes of Action:

- 4 21. Certification of the action as a class action on behalf of the Proposed
5 Plaintiff Class as to all causes of action herein.
6 22. For costs of suit herein generally and pursuant to California Code of Civil
7 Procedure §1021.5.
8 23. For an award of prejudgment interest as authorized under the law. For an
9 award of post judgment interest as authorized under the law.
10 24. For attorneys' fees under Labor Code 226, 1194, and 2699(g)(1), 2802,
11 California Code of Civil Procedure §1021.5.
12 25. For such other relief as this Court deems just and proper.
13
14

15 Dated: April 4, 2011

HUTKIN LAW FIRM

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19 By: 

20 Allen K. Hutkin, Esq.,
21 Attorney for Plaintiffs
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kathryn M. Eppright, SBN 161429 Andre Morris & Buttery 1102 Laurel Lane, P.O. Box 730 San Luis Obispo, CA 93406 TELEPHONE NO.: (805) 543-4171 FAX NO. (Optional): (805) 543-0752 E-MAIL ADDRESS (Optional): kepwright@amblaw.com ATTORNEY FOR (Name): Defcs. Clearwater Nursery, Inc. & Mahmood Jafroodi		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO STREET ADDRESS: 1035 Palm Street, Room 385 MAILING ADDRESS: County Government Center CITY AND ZIP CODE: San Luis Obispo, CA 93408 BRANCH NAME: San Luis Obispo		
PLAINTIFF/PETITIONER: Carolina Ramirez, et al.		
DEFENDANT/RESPONDENT: Clearwater Nursery, Inc., et al.		
GENERAL DENIAL		CASE NUMBER: CV 110083
If you want to file a general denial, you MUST use this form if the amount asked for in the complaint or the value of the property involved is \$1,000 or less. You MAY use this form for a general denial if: 1. The complaint is not verified; or 2. The complaint is verified and the case is a limited civil case (the amount in controversy is \$25,000 or less), BUT NOT if the complaint involves a claim for more than \$1,000 that has been assigned to a third party for collection. (See Code of Civil Procedure sections 85-86, 90-100, 431.30, and 431.40.)		

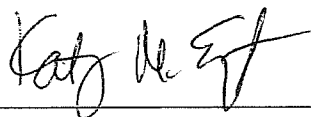
1. DEFENDANT (name): **Clearwater Nursery, Inc. and Mahmood Jafroodi**
generally denies each and every allegation of plaintiff's complaint.
2. ☒ DEFENDANT states the following FACTS as separate affirmative defenses to plaintiff's complaint (attach additional pages if necessary):

See attached separate affirmative defenses

Date: May 31, 2011

Kathryn M. Eppright

(TYPE OR PRINT NAME)



(SIGNATURE OF DEFENDANT OR ATTORNEY)

If you have a claim for damages or other relief against the plaintiff, the law may require you to state your claim in a special pleading called a cross-complaint or you may lose your right to bring the claim. (See Code of Civil Procedure sections 426.10-426.40.) The original of this *General Denial* must be filed with the clerk of this court with proof that a copy was served on each plaintiff's attorney and on each plaintiff not represented by an attorney. There are two main ways to serve this *General Denial*: by personal delivery or by mail. It may be served by anyone at least 18 years of age EXCEPT you or any other party to this legal action. Be sure that whoever serves the *General Denial* fills out and signs a proof of service. You may use the applicable Judicial Council form (such as form POS-020, POS-030, or POS-040) for the proof of service.

Page 1 of 1

Carolina Ramirez, et al. v. Clearwater Nursery, Inc., et al.
Case No. CV 10083

SEPARATE AFFIRMATIVE DEFENSES

First Affirmative Defense

1. As a first, separate and affirmative defense, Defendants Clearwater Nursery, Inc. and Mahmood Jafroodi ("Answering Defendants") allege that each of the causes of action individually fail to state facts sufficient to constitute a cause of action against these Answering Defendants, and each of them, under any legal theory.

Second Affirmative Defense

2. As a second, separate and affirmative defense, these Answering Defendants allege that Plaintiffs are barred by all applicable statutes of limitations, including Code of Civil Procedure sections 338(a) and 340(a) and Business & Professions Code section 17208.

Third Affirmative Defense

3. As a third, separate and affirmative defense, these Answering Defendants allege that Plaintiffs have unreasonably delayed in bringing this action to the prejudice of these Answering Defendants and are therefore barred from recovery by the principle of laches.

Fourth Affirmative Defense

4. As a fourth, separate and affirmative defense, these Answering Defendants allege that Plaintiffs are barred from recovery, in whole or in part, because they failed to make reasonable efforts to mitigate their damages, if any.

Fifth Affirmative Defense

5. As a fifth, separate and affirmative defense, these Answering Defendants allege that Plaintiffs are barred, in whole or in part, from bringing the claims set forth in the complaint by the principles of waiver and estoppel due to their own negligence in reporting of hours worked and compliance with reasonable workplace policies and procedures.

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Sixth Affirmative Defense

6. As a sixth, separate and affirmative defense, these Answering Defendants allege that no contracts for employment were entered into between the Plaintiffs and these Answering Defendants.

Seventh Affirmative Defense

7. As a seventh, separate and affirmative defense, these Answering Defendants allege that Plaintiffs are not entitled to waiting time penalties under California Labor Code section 203, because Plaintiffs have not quit or been discharged or because any failure to pay wages was not willful on the part of these Answering Defendants.

Eighth Affirmative Defense

8. As an eighth, separate and affirmative defense, these Answering Defendants allege that Plaintiffs secreted or absented themselves to avoid payment of wages and/or refused to receive the payment fully tendered to them by these Answering Defendants, thereby relieving these Answering Defendants from liability for waiting time penalties under Labor Code section 203.

Ninth Affirmative Defense

9. As a ninth, separate and affirmative defense, these Answering Defendants allege that Plaintiffs are not entitled to liquidated damages because any alleged act or omission by these Answering Defendants was in good faith and these Answering Defendants had reasonable grounds for believing that their conduct did not violate any provision of the Labor Code or Industrial Welfare Commission order relating to minimum wages.

Tenth Affirmative Defense

10. As a tenth, separate and affirmative defense, these Answering Defendants allege that Plaintiffs' claims are barred by the doctrine of unclean hands due to their intentional non-compliance with reasonable workplace policies and procedures.

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PROOF OF SERVICE

I am employed in the County of San Luis Obispo, State of California. I am over 18 years of age and not a party to this action. My business address is 1102 Laurel Lane, San Luis Obispo, CA 93401.

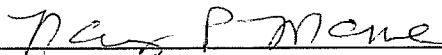
On May 31, 2011, I served the within **GENERAL DENIAL** on the interested parties and/or their attorneys of record to this action by placing a true copy as follows:

SEE ATTACHED LIST

- ☒ **BY MAIL:** I placed a true copy of the foregoing document in a sealed envelope, addressed to each interested party as set forth above, with postage fully prepaid, for collection and mailing pursuant to the ordinary business practice of this office, which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business.
- ☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the offices of the addressee(s).
- ☐ **BY OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to the above parties by the close of the next business day by _____ with delivery fees paid or provided.
- ☐ **BY FACSIMILE:** I caused a true copy of the foregoing document(s) to be served by facsimile transmission at the time shown on each attached transmission report from sending facsimile machine number (805) 543-0752 to each interested party at the facsimile number as shown above. Each transmission was reported as complete and without error. A true copy of each such transmission report is attached hereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 31, 2011, at San Luis Obispo, California.



Nancy P. Monroe

SERVICE LIST

Carolina Ramirez, et al. v. Clearwater Nursery, Inc., et al.
Case No. CV 008311

Attorney

Representing

Allen K. Hutkin
Hutkin Law Firm
1229 Higuera Street, 1st Floor
San Luis Obispo, CA 93401
Phone: (805) 544-1500
Fax: (805) 544-1532
E-mail: ahutkin@hutkinlaw.com

Plaintiffs

Vincent T. Martinez
Twitchell & Rice, LLP
215 North Lincoln Street
P.O. Box 520
Santa Maria, CA 93456-0520
Phone: (805) 925-2611
Fax: (805) 925-1635
E-mail: vmartinez@twitchellandrice.com

Defendant Custom Labor Services, Inc.

Julia L. Montgomery
Shannon M. Going
California Rural Legal Assistance Foundation
2210 K Street, Suite 201
Sacramento, CA 95816
Phone: (916) 446-7904
Fax: (916) 446-3057

Defendant Custom Labor Services, Inc.

In re: Clearwater Nursery, Inc.

United States Bankruptcy Court, Case No. 9:17-bk-10525-PC

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
8 E. Figueroa Street, Suite 300, Santa Barbara, CA 93101

A true and correct copy of the foregoing document entitled (*specify*): **Notice of Motion and Motion for Relief from Automatic Stay with Supporting Declaration**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) July 20, 2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

William C Beall will@beallandburkhardt.com, carissa@beallandburkhardt.com

•Jeremy W. Faith (TR) Trustee@MarguliesFaithlaw.com,

C118@ecfcbis.com;Helen@MarguliesFaithLaw.com;leedowding@gmail.com;Brian@MarguliesFaithlaw.com

•David A Juhnke docket@sjmslaw.com

• United States Trustee (ND) ustpregion16.nd.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

On (*date*) July 20, 2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) July 20, 2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hand Delivery: Hon. Peter Carroll, U.S. Bankruptcy Court, 1415 State Street, Santa Barbara, CA

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

20, 2017
Date

Evelyn R. Downs
Printed Name


Signature

In re: Clearwater Nursery, Inc.
United States Bankruptcy Court, Case No. 9:17-bk-10525-PC

Attorneys for Plaintiffs:

Rosa Erandi Zamora
California Rural Legal Assistance F
2210 K Street, Ste 201
Sacramento, CA 68516

Allen K. Hutkin
HUTKIN LAW FIRM
1220 Marsh Street
San Luis Obispo, CA 93401

Debtor and Debtor's Attorney:

Clearwater Nursery, Inc.
P.O. Box 1170
Nipomo, CA 93444

Clearwater Nursery
887 Mesa Road
Nipomo, CA 93444-9325

Clearwater Nursery
2901 Sturgis Road
Oxnard, CA 93030-7938

William C Beall
Beall and Burkhardt, APC
1114 State St Ste 200
Santa Barbara, CA 93101